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April 29, 2004
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 2, 2003

Case Number: TSO-0056

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local security office of the Department of Energy (DOE) determined that reliable information it had received raised substantial doubt concerning the individual's eligibility for access authorization under the provisions of Part 710. The issue before me is whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. For the reasons stated below, I find that the individual's access authorization should not be restored.

I. BACKGROUND

The individual works at a DOE facility and has held an access authorization since 1990. In February 2000 the individual was counseled by his supervisor for having misused his government-issued credit card. The individual had used it to purchase personal items and to obtain cash in amounts exceeding per-diem rates while on official travel, some of which was used for gambling. A few days after that counseling session, a personnel security specialist interviewed the individual regarding the same issue and other matters of financial irresponsibility. During that Personnel Security Interview (PSI) the individual stated that he now understood the rules governing use of his government-issued credit card and promised that he would no longer violate those rules. Nevertheless, by March 2002, the individual was again abusing the terms of his government-issued credit card in precisely the same manner as before. The local security office conducted a second PSI in July 2002, but was unable to resolve the security concerns that his credit card abuse and gambling raised. The local security office then had the individual assessed by a consultant psychiatrist (DOE psychiatrist), who determined that, although the individual was a "problem gambler," he did not suffer from an illness or mental condition that might cause a significant defect in his judgment or reliability.

On the basis of that information, the local security office issued the individual a Notification Letter, in which it stated that the DOE has substantial doubt about the individual's eligibility for access authorization, based on disqualifying criteria set forth in 10 C.F.R. § 710.8(l) (Criterion L). In the Notification Letter, the local

security office stated that the DOE psychiatrist had determined that the individual is a “problem gambler.” The letter further stated that the individual engaged in unauthorized use of his government-issued credit card, described several examples of such abuse, and alleged that the individual abused his credit card privileges after being counseled about its proper use.

The Notification Letter also informed the individual of his procedural rights, including his right to a hearing. The individual then filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as hearing officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called as its only witness the personnel security specialist who conducted the July 2002 PSI. The individual, who was represented by counsel, testified on his own behalf and called as witnesses his supervisor, and two co-workers. The DOE submitted 29 written exhibits; the individual submitted seven exhibits, including one at the hearing and one after the hearing, accepted into the record with the agreement of DOE counsel. The record of this proceeding was closed when I accepted the last exhibit into the record. A verbatim transcript of the hearing (Tr.) is also part of the record in this proceeding.

II. STANDARD OF REVIEW

The hearing officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The applicable DOE regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual’s access authorization eligibility shall be resolved in favor of the national security.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is raised as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d); *see, e.g., Personnel Security Hearing* (Case No. TSO-0009), 28 DOE ¶ 80,941 (October 21, 2003), and cases cited therein. In the present case, reliable information has raised such a question. After carefully reviewing

the full record, I have determined that the individual has not demonstrated that restoring his security clearance will not endanger the common defense and will clearly be in the national interest.

III. FINDINGS OF FACT

The individual has held a government-issued credit card since at least November 1999. DOE employees who travel regularly in the course of their employment are generally issued credit cards to permit them to purchase such incidents of travel as airline tickets, hotel rooms, and rental cars, and to withdraw cash to cover other authorized travel expenses. Every credit card holder, including the individual, signs an agreement with the credit card issuer that he will not use the card for non-authorized purchases. *See* Tr. at 90. In February 2000, the individual was carrying a past due balance of about \$3,600 on his credit card account, the result of purchases and cash withdrawals dating from November 1999 forward. Of that amount, according to the individual, about \$1,000 represented items purchased and cash withdrawn for personal use. Tr. at 83-84. Of the \$1,000, roughly \$500 was used for gambling. Tr. at 84. On February 4, 2000, the individual met with one of his supervisors, who counseled him as to the proper use of his government-issued credit card. Transcript of February 8, 2000 PSI (PSI 1 Tr.) at 13, 68. *See* Transcript of July 16, 2002 PSI (PSI 2 Tr.) at 55-58. On February 8, 2000, a personnel security specialist conducted a PSI, inquiring into the individual's credit card use and unexplained outstanding debts. During the PSI, the individual admitted that he had "very possibly" used his credit card to obtain cash with which to gamble while he was in travel status, PSI 1 Tr. at 17, and to obtain cash when he was not on travel. *Id.* at 18. As an example, from December 12 through December 18, 1999, the individual withdrew more than \$600 in six separate transactions, including \$281 on a Saturday, all in his hometown. *See* DOE Exhibit 4-9 at 5. Those two Saturday withdrawals were made at automated teller machines located in a casino, and the individual admitted that at least some of the cash he withdrew was used for personal purposes, including gambling, food and entertainment. *Id.* at 31-32, 43-49. He explained that he had not realized that he was using his credit card improperly, until his supervisor had explained to him, the Friday before the PSI, that cash withdrawals were to be used only for official purposes and not for entertainment and other personal expenses. *Id.* at 13. He stated that under a previous travel cost payment system, he was given a lump sum of cash with which to pay all expenses incurred while on travel, both business-related and personal, and he treated the credit card the same way. *Id.* As a result, he thought he could use his credit card for any expenses as long as he was in travel status, *id.* at 55, and that he could take up to 60 days to pay off his credit card bill. *Id.* at 61. By the end of the PSI, the individual stated that he understood what he had done wrong, and would not continue this conduct in the future. *Id.* at 66, 85, 88.

On July 16, 2002, a different personnel security specialist conducted a second PSI, investigating once again the individual's credit card use. The individual stated that due to long working hours during the two to three months preceding the PSI, he had used the government-issued credit card to purchase groceries and running shoes. PSI 2 Tr. at 8. On a typical day trip, he commonly would withdraw \$100 for "groceries, snacks, . . . restaurants." *Id.* at 10. He seemed surprised when the personnel security specialist interviewing him told him that his per-diem allowance for such expenses was \$38. *Id.* at 10-11. He purchased eight pairs of footwear, which he maintained he needed for his work, using his government-

issued credit card. *Id.* at 12, 26. He acknowledged that he knew that that was an improper use of his credit card, but in response to being asked why he used the credit card when he knew such use was improper, he responded, "Probably was the only . . . avenue I had at the time." *Id.* at 11. Within a three-day period beginning on March 22, 2002, the individual withdrew over \$450 from cash machines, and used at least some of that cash to purchase clothing and home decorations while on annual leave. *Id.* at 20-21; *see also* DOE Exhibit 4-9 at 2. The individual explained that when he gets busy, he uses the credit card for personal as well as business expenses. PSI 2 Tr. at 20. He was not short of funds during this period, because on March 25, he arranged to pay off over \$2,000 of his credit card balance. *Id.* at 23. His only explanation was that he was working a lot of overtime. *Id.* He stated that he did not have an ATM card, though he did have a personal credit card. *Id.*

Q: Why does [your wife] have an ATM card and you do not?

A: Um, well I have the government card.

Id. at 63. He does not have access to cash through his personal credit card, though his wife does, and his wife manages the household finances. *Id.* at 63-67, 73. When asked why he turned over the household finances to his wife, he stated that he wanted to limit his access to funds, so that he would not spend money impulsively. *Id.* at 73-74.

The individual was asked whether he remembered this same issue of government-issued credit card misuse being brought to his attention in the past. At first, he denied any recollection of meeting with his supervisors. Following considerable prompting, the individual acknowledged that he remembered meeting with both his supervisors and a personnel security specialist in 2000 to discuss this problem. *Id.* at 54-57. He remained somewhat unclear about the substance of the meetings, but agreed he had been made to understand what were proper uses of his government-issued credit card and what were not. *Id.* at 57-58. When asked why he continued to use his government-issued credit card to gamble after he had been spoken to by his supervisors and knew that it was improper to do so, he responded:

Mm, the answer would, I don't know what the proper answer would be. Why then did, did I continue? (Pause.) Uh, you start to think that the only one that it's affecting is me. I don't . . . you don't think that it's, it's affecting anyone else but, but me. And then I figure . . . I pay it back, this is my thinking, so I don't think that I'm affecting any, anything else, . . . my employer, . . . my family, my job. I don't think . . . it's affecting anybody but me, and I can, I've had 39 years of handling me, so I figure I'd be okay.

Id. at 58-59.

The PSI also addressed the individual's gambling. On May 2, 2002, the individual withdrew over \$340 in three transactions over a two-hour period. He admitted he used the money to place bets at a racetrack. *Id.* at 28-29. He also stated that he goes to the racetrack about twice a month, *id.* at 31-32, and uses his

government-issue credit card to obtain cash for betting (or to recoup his betting losses) about five times a year. *Id.* at 49, 54, 71. When asked whether he knew it was wrong to use a government-issued credit card to gamble, the individual responded, “You’re probably not . . . thinking along those lines when you’re doing it.” *Id.* at 33. After the hearing, the individual submitted proof that he was on travel at the time of the May 2, 2002 cash withdrawals. E-mail from Individual, November 14, 2003.

The record indicates that the individual attended a total of six or seven sessions with licensed professional counselors concerning his gambling. Tr. at 86; Individual’s Exhibit 4. He attended three sessions with one counselor, according to an undated letter from the counselor, in which the counselor concludes that the individual has “removed himself effectively from any further activity that might negatively affect his job or his job performance. I feel he has dealt with his issue and has met resolution positively.” Individual’s Exhibit 4; *see* PSI 2 Tr. at 42-44. The individual met with a second counselor three or four times in late 2002 and early 2003, also to discuss his gambling issues. Individual’s Exhibit 4; Tr. at 86-87. In a February 20, 2003 letter, the second counselor reaches a similar conclusion and states her opinion that “he has sincere regret for his behavior and is determined not to repeat it.”

The record also indicates that the individual has had no difficulty in meeting his payment obligations on the government-issued credit card account for at least the past two years. At the hearing, the individual submitted into the record pay statements for his wife and himself that demonstrate annual earnings far in excess of any incurred credit card indebtedness shown in this proceeding. Individual’s Exhibit 6. The personnel security specialist testified that there is no evidence of government-issued credit card abuse in any manner since July 2002. Tr. at 42.

Finally, a co-worker of the individual testified that, until he received a February 2003 memorandum outlining penalties for misuse of government-issued credit cards, the co-worker’s understanding was that such credit cards could be used for any business or personal purchase, provided the credit card holder was in travel status and the credit card bill was paid when it came due. *Id.* at 64. Examples of purchases he knew for which fellow travelers had used their government-issued credit cards included CDs and flowers, clothes, snacks at 7-Eleven, and golf fees. *Id.* at 64, 65, 68.

IV. ANALYSIS

Criterion L describes a security concern that is raised when a person has

[e]ngaged in any unusual conduct . . . which tend[s] to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.

10 C.F.R. § 710.8(l). The local security office’s concerns under Criterion L relate to the individual’s gambling history and his history of abuse of his government-issued credit card. The specific Criterion L

concerns arising from the individual's gambling are that a DOE consultant psychiatrist stated in his evaluation of the individual that he was a "problem gambler," and that the individual obtained cash advances, using his government-issued credit card, for gambling and for reimbursing himself for gambling losses. With respect to the individual's credit card abuse, the local security office's specific concerns are that he used his government-issued credit card to obtain cash advances for gambling (as stated above) and for other purchases of a personal nature, such as groceries, shoes, clothing, and home decorations, and that he acknowledged using his credit card in this manner even after he had been made aware that the credit card was to be used only for authorized official travel expenses. His credit card abuse raises a security concern in that it constitutes conduct or behavior that demonstrates that he is not honest, reliable or trustworthy, because he has wilfully disregarded the Department of Energy's rules and regulations regarding use of government-issues credit cards. The fact that he continued abusing his credit card privileges even after being reprimanded for that behavior also brings into question the individual's judgment and reliability. *See* Tr. at 20-21 (testimony of personnel security specialist).

The evidence in the record establishes that the local security office properly invoked Criterion L in this case. Under this circumstance, as discussed above, the individual bears the burden of convincing the hearing officer the he has mitigated the identified security concerns to the extent that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

A. Gambling

After evaluating the individual, the DOE consultant psychiatrist concluded that the individual did not suffer from a pathological gambling disorder according to the criteria established in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition. DOE Exhibit 2-1 (Report of DOE Consultant Psychiatrist) at 10. The DOE consultant psychiatrist did, however, state his belief that the individual is a "problem gambler," and if he "continues to gamble, it is more likely that not that his problem gambling will progress to Pathological Gambling." *Id.*

There is no evidence in the record that gambling has ever led to any financial difficulties for the individual. For example, he has consistently paid off his monthly credit card bills. Gambling has not caused him any financial difficulties. At the hearing, he pointed out that his gambling has not been a chronic problem in his life, but rather has been concentrated in two isolated periods in 2000 and 2002. Tr. at 89. He has given his commitment that he will not gamble any more. *Id.* at 84, 90-91. More significantly, he has sought out counseling for his gambling problem. *Id.* at 112. Although he is no longer meeting with either of his counselors regarding this problem, he testified that one of them is available for him should the need for her assistance arise. *Id.* at 113.

Considering the record before me, I find that the individual has mitigated the security concern raised by his gambling problem. Nevertheless, the individual's gambling bouts represent one type of impulsive behavior,

among many, that has caused him to abuse his government-issued credit card. That concern will be addressed below.

B. Abuse of Government-Issued Credit Card

As the record demonstrates, the local security office's security concern does not rest on any financial difficulties the individual's credit card use has caused, for the individual's record of payment of his credit card bills has been satisfactory. *Id.* at 103. Nor is this issue one of fraud, for the individual has never attempted to charge off personal expenditures to the government. *Id.* at 27. The sole national security concern is that the individual has disregarded the rules governing the use of his government-issued credit card. He cannot claim ignorance of those rules to mitigate the concern. In February 2000, after they were alerted to improprieties in his credit card use, including obtaining cash advances for gambling, his supervisors counseled him in person. A few days later, during a PSI, a personnel security specialist explained that government-issued credit cards cannot be used for personal purchases. After being counseled on two different occasions within the same week, the individual clearly understood the errors he had made, understood the proper use of his credit card, and, at the end of the PSI, stated that he would not continue abusing his credit card. PSI 2 Tr. at 88.

Despite that commitment, two years later the individual had resumed abusing the government-issued credit card, in precisely the same manner: obtaining cash advances for gambling and for recouping gambling losses, and purchasing purely personal items with the card. It appears he reverted to the same misunderstanding he held in 2000 regarding credit card use: as long as he was in travel status and paid the credit card bill, then he believed he could use the card for any purchases. However, he violated even his own interpretation of the rules, in that he obtained cash advances for gambling when he was at home, and for personal shopping when he was on annual leave.

The individual's coworker testified that his understanding of the rules governing government-issued credit card use was similar to that of the individual, at least until he was informed of new policy in the February 2003 memorandum. While that may be true, I cannot impute the same innocent ignorance to the individual. As of February 2000, the individual was notified and counseled regarding his improper use of his government-issued credit card, and he apologized to his supervisors for his misunderstanding and stated to a personnel security specialist that he understood the governing rules. I must therefore attribute knowledge and wilfulness to the credit card abuse in which he engaged after February 2000. An individual who knows or should know not to use a government-issued credit card for personal expenses, yet continues to do so, demonstrates questionable trustworthiness and reliability. *See Personnel Security Hearing* (Case No. VSO-0435), 28 DOE ¶ 82,804 at 85,746 (June 15, 2001) (once told of improper behavior, regarding computer use in this case, "he should have learned his lesson and stopped doing it") (affirmed by OSA, 2001). Considering the record before me, I conclude that the individual wilfully disregarded the rules governing the use of his government-issued credit card. He understood what the rules were, but chose to substitute his own rationale for them: as long as no one else was affected by his conduct, the conduct was permissible.

The record in this case suggests that the individual's inability to control his impulses is the root security concern. He gambles (or has gambled) impulsively, and he spends money impulsively. He uses his government-issued credit card for access to the funds he needs to satisfy those impulses. The evidence demonstrates that the individual understands that he cannot control these impulses and has developed strategies for controlling them. He has pursued a traditional mechanism, professional counseling, for handling his gambling urges, and this strategy may work in the long run. On the other hand, his strategy for controlling his spending impulses has been to give his wife control over the family credit cards and ATM cards. Until July 2002, he was defeating his own strategy by using his government-issued credit card to gain access to cash in excess of what his wife gave him. According to his testimony, he has not abused his government-issued credit card privileges since July 2002. Tr. at 42. For the moment, it appears he is succeeding in controlling his spending impulses. Nevertheless, he has not convinced me that his strategy will succeed in the long run. There is no evidence in the record that the individual has conquered his spending impulses. He still carries no card that would give him access to personal funds or credit purchasing. *Id.* at 102. If his wife does not give him enough cash to meet his personal needs or desires, his only recourse is to use his government-issued credit card to obtain cash or make purchases. And if he abused his credit card in the future by making personal purchases or obtaining cash advances— whether for gambling, or for recouping gambling losses, or for any other non-official purpose— the individual would be under pressure to hide that fact. The risk of embarrassment or disappointment, not to mention the fear of losing his access authorization or his employment, would surely make him vulnerable to coercion, exploitation or duress. Consequently, I find that the individual has not mitigated that concern under Criterion L.

V. CONCLUSION

During the hearing the individual acknowledged his poor judgment in abusing his government-issued credit card privileges. He stated that if he had ever known his mishandling the card could cause him problems, he never would have done it. *Id.* at 87-88. But he did know that his behavior could cause him problems: he knew that because he was counseled about these same issues in February 2000, and he gave assurances then that he understood what the rules were and would abide by them. Did he forget those sessions by March 2002? Did he remember but chose not to recall them during the hearing? I need not resolve that issue; in either case, the security concerns raised in this case are not resolved. To his credit, by the time of the hearing, the individual had abstained from continuing to abuse his government-issued credit card for over a year. However, he also managed to abstain from abusing the card for a long period between 2000 and 2002. I am not convinced that his impulses will not resurface in the near future and cause him to resume the abuse. Nor am I convinced that the individual's impulsiveness, which has led him to disregard one set of rules, will not also lead him to disregard other rules, including rules that protect classified information and special nuclear material.

On the basis of the evidence before me and the individual's demeanor that I have observed during this hearing process, I believe there is unacceptable risk that the individual will repeat his acknowledged errors in judgment. For the reasons set forth above, I conclude that the individual has not presented evidence that

warrants restoring his access authorization. He has not demonstrated that restoring his access authorization will not endanger the common defense and will be clearly consistent with the national interest. Therefore, the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: April 29, 2004